IN THE HIGH COURT OF BOMNBAY AT GOA

WRIT PETITION NO.590/2003

Shri Laxmikant D. Naik Karmali,
Civil Engineer, near St. Joaquim
Chapel, Borda, P.O. Fatorda,
Margao, 403 602. ..... Petitioner.

V/s.

1) State of Goa,
represented by the Chief
Secretary, Government of Goa,
Secretariat, Panaji 403 001.

2) The Executive Engineer,
Works Division XIV,
Public Works Department,
Fatorda, Margao, 403 602.

3) The Executive Engineer,
Works Division XV.,
Public Workds Department,
Ponda, Goa 403 401.

4) The Executive Engineer,
Works Division VI.,
Public Works Deparrtment,
Fatorda, Margao, 403 602. ..... Respondents.

Mr. Caetano Mascarenhas, Advocate for the petitioner.

Mr. H.D. Naik, Addl. Govt. Advocate for the Respondents.

CORAM : A.M. KHANWILKAR, J.

DATE : DECEMBER 4, 2003.

ORAL ORDER :

Heard both sides. The question that arises for consideration is whether the petitioner could have claimed interest from the date of decree till the

realisation of the decretal amount ? It is not in dispute that no such request was made before the Civil Judge, Sr. Division, Margao when the award was made decree of the Court. But that claim is set up by way of an application under Section 152 of the Code of Civil Procedure read with 29 of the Arbitration Act, 1940. The Court below has rejected this application on the ground that it was not competent to extend such a relief in exercise of powers under Section 152 of the Code because it is not possible to suggest that in providing for interest for the period post decree, was either on account of incidental slip or omission. I find no reason to depart from the said view taken by the Court below. It is only in cases where it can be demonstrated that the error which needs to be corrected was on account of arithmetical mistake in the Judgment and Decree or errors arising from any incidental slip or omission, that can be remedied by invoking powers under section 152 of the Code and not otherwise. In the circumstances, I see no infirmity in the conclusion reached by the Court below in rejecting the application as filed by the petitioner in exercise of writ jurisdiction.

2. Counsel for the petitioner, however, placed strong reliance on the decision of the Apex Court in AIR 1999 SC 1258, in M/s. Jagdish Rai and Brothers vs.

Union of India. Indeed in that case before the Supreme Court an application was not made before the first Court. However, that prayer was made before the High Court in appeal, which was preferred against the decree passed by the Civil Court; whereas, in the present case, the petitioner did not carry the matter in appeal, but has preferred the application before the trial Court under Section 152 of the Code after the decree was allowed to become final, as no appeal or revision was preferred by the petitioner. To my mind, the Judgment of the Supreme Court pressed into the service will be of no avail to the petitioner because we are concerned with the scope of interference under Section 152 of the Code. Counsel for the petitioner relied upon the decision of the Punjab and Haryana High Court reported in AIR 1982 Punjab & Haryana 184, in Nand Ram and others vs. State of Punjab. That was a case arising out of the proceedings under the Land Acquisition Act. In that case, the Court clearly found that the mistake which was required to be rectified was clearly accidental slip or omission. On this reasoning, the said decision will be of no avail to the petitioner. Hence, I see no reason to interfere. Rejected.

A.M. KHANWILKAR, J.

ssm.